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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,014	03/30/2004	Michael Weinberger	LOJM-0462	5570
7590		05/04/2007		
Michael Weinberger				
236 West 26th Street				
New York, NY 10001				
			EXAMINER	
			KRISHNAN, MALINI	
			ART UNIT	PAPER NUMBER
			1714	
			MAIL DATE	DELIVERY MODE
			05/04/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/814,014	<b>Applicant(s)</b> WEINBERGER, MICHAEL	
	<b>Examiner</b> Malini Krishnan	<b>Art Unit</b> 1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4,5,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4,5,9,10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/12/07</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The amendment filed April 12, 2007 has been received and claims 4,5, 9, and 10 are now pending. All outstanding rejections are withdrawn in light of applicant's amendment.
2. The text of those sections of Title 35, US Code not included in this action can be found in a prior office action.
3. The new grounds of rejection set forth below are necessitated by applicant's amendment filed April 12, 2007. In particular, claims 9-10 are new. The claims incorporate matter not included previously, and are therefore being presented for the first time after an action on the merits was sent. Thus, the following action is properly made final.

#### ***Claim Rejections - 35 USC § 102***

4. Claims 4, 5, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Orlov (271).

Orlov discloses a substantially rectangular fuel container for gel or wax fuel, used in a domestic fireplace. The container comprises an elongate bottom wall, a left side wall, a right side wall, an elongate front wall and an elongate back wall, thereby defining a fuel-receiving chamber. The container also includes a top wall, which is an aperture plate, having a single aperture in the shape of an elongate slot. Further, means for regulating the size of the aperture is provided as a snuffer plate, which can be moved to open and close the aperture in the aperture plate, or top wall. The snuffer plate can be considered a "removable lid" as instantly claimed. Although mention of "vapor

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restrictors" is not explicitly stated, it is the examiner's position that such restrictors are provided for inherently by the top aperture plate, since the aperture is only a slot within the plate, and the rest of the plate can be considered the restrictors, extending from each of the front, back, left and right walls. The aperture slot allows a visible flame pattern of shape and size corresponding to the shape of the aperture to exit (col. 1, line 25-col. 2, line 40; Figure 1, 4).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 4-5, 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrara (610) in view of Orlov (271).

Ferrara discloses a self-regulating, substantially rectangular fuel cartridge comprising an elongate bottom, front, back wall, and a left-side and right-side wall, thereby defining an elongated rectangular noncombustible fuel-receiving chamber. A lid is positioned as a top wall, which is joined to the left, right, front and back walls and extends parallel to the bottom wall, enclosing the chamber. Further, the top wall comprises an elongate rectangular vapor exit aperture of a predetermined constant size, which permits the exit of vapors from the fuel receiving chamber, thereby creating an elongate, rectangular flame pattern of predetermined size and shape corresponding to a size and shape of the exit aperture (col. 3, lines 59-68; col. 4, lines 1-40).

Examiner notes that the phrase "for a domestic fireplace" in the instant application is a statement of intended use, and does not further limit the instant claims. Applicant's attention is drawn to MPEP 2111.02 which states that intended use statements must be evaluated to determine whether the intended use results in a structural difference between the claimed invention and the prior art. Only if such structural difference exists, does the recitation serve to limit the claim. If the prior art structure is capable of performing the intended use, then it meets the claim. It is the examiner's position that the intended use recited in the present claims does not result in a structural difference between the presently claimed invention and the prior art and further that the prior art structure is capable of performing the intended use. Given that Ferrara discloses a fuel cartridge as presently claimed, it is clear that the fuel cartridge of Ferrara would be capable of performing the intended use, i.e. in a domestic fireplace, presently claimed as required in the above cited portion of the MPEP.

Ferrara is silent with respect to the chamber holding gel fuel, and inclusion of a removable lid, which may open the rectangular vapor aperture.

The disclosure of Orlov in paragraph 4 above is herein incorporated by reference.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to have combined the teachings of Ferrara and Orlov in order to utilize a gelled fuel as the fuel disclosed by Ferrara, and to incorporate a means for regulating the flame and aperture size.

#### ***Response to Arguments***

8. Applicant's arguments with respect to claims 4-5, 9-10 have been considered but are moot in view of the new ground(s) of rejection.

With regard to a rejection over the presently amended claims over previously applied references Fernholtz (157) or Perlman (877), applicant argues that the references do not teach noncombustible containers and top walls. Examiner agrees and has such set forth new rejections over Orlov and Ferrara, as applied above.

#### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Malini Krishnan whose telephone number is 571-272-6519. The examiner can normally be reached on Monday through Friday, 8:00 am - 5:00 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Malini Krishnan

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